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Supreme Court of the United States

OCTOBER TERM 1946

No. 733.

INTERSTATE NATURAL GAS COMPANY, INCORPORATED, a Corporation,

Petitioner,

v.

FEDERAL POWER COMMISSION, LOUISIANA PUBLIC SERVICE COMMISSION, CITY OF NEW ORLEANS, LOUISIANA, and CITY OF BATON ROUGE, LOUISIANA,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION OF INTERSTATE NATURAL GAS COMPANY, INCORPORATED, FOR REHEARING OF THE PETITION FOR CERTIORARI.

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PETITION OF INTERSTATE NATURAL GAS COMPANY, INCORPORATED, FOR REHEARING OF THE PETITION FOR CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now the Interstate Natural Gas Company, Incorporated, Petitioner above named, and presents this its petition for a rehearing of the Petition for Certiorari in this case.

I.

Jurisdiction.

The Petition for Certiorari in this case was denied on January 6, 1947. This petition for rehearing thereon is filed within less than twenty-five days thereafter pursuant to Rule 33.

II.

Statement.

This is a rate case instituted by the Federal Power Commission against a "natural-gas company" under the Federal Natural Gas Act. (53 Stat. 821, 15 U. S. C. Sec. 717 *et seq.*) Petitioner claims that a part of its activity is not subject to regulation by that agency. The Federal Power Commission, however, has undertaken to regulate that which Petitioner earnestly contends is beyond its power to regulate.

Petitioner makes two types of sales of natural gas. Sales are made from a trunk pipe line system originating in the Monroe Gas Field in Louisiana and extending southward through Mississippi and back into Louisiana from which sales are made to distributing companies for resale. So much of the Commission's order as related to those sales was not brought here for review.

Within that same Monroe Field, *within* the State of Louisiana, however, Petitioner makes deliveries at natural pressure to three pipe line companies and that gas, without further control by Petitioner, is by them compressed and after compression, transported out of the state *for the first time* (R. II 577-581). These sales within the field are of commingled gas either produced by Petitioner, or purchased

by it at various points along its gathering system (R. II 576, 577). This gas is commingled at the same point with gas purchased from other sources by the pipe line companies (R. II 577-581) and so does not supply their total requirements: The Mississippi River Fuel Corporation secures (jointly from Petitioner and another company not here involved) 22 per cent of its requirements; Southern Natural Gas Company secures 16.6125 per cent from Petitioner; and Memphis Natural Gas Company receives 24 per cent from Petitioner (R. II 794). The remainder of the three purchasing companies' requirements comes from other producers in the same field or elsewhere in northern Louisiana (R. II 794). The sales so made by Petitioner of necessity require an extensive gathering system to reach 110 wells owned by Petitioner (R. 564, 569, *et seq.*). Acting thus wholly within the one field in producing, purchasing, and gathering gas and then selling it without reservation, Petitioner submits, comes within the following provision of the Natural Gas Act:

> "Section 1. (b) The provisions of this Act * * * shall not apply * * * to the production or gathering of natural gas." (15 U. S. C. Sec. 717 (b)).

and as well is not transporting and selling in interstate commerce as such commerce is defined in the Act:

> " 'Interstate Commerce' means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as commerce takes place within the United States." (Section 2(7), 15 U. S. C. Sec. 717a(7)).

In the majority opinion and judgment of the Circuit Court, review of which is here sought, the legislative exemp-

tion from the Act was held to apply only to the physical activities of production and gathering and the properties used in such activities. Judge Waller (dissenting) claimed that the Act itself was clear in its exemption of Petitioner's producing and gathering sales from Commission jurisdiction. In addition, Petitioner adduced abundant and valid evidence of the legislative intent if the Act itself was found wanting.

III.

Reasons.

Petitioner respectfully gives as reasons for the granting hereof the following special and important matters:

1. On the day the Petition for Certiorari was denied, your Honorable Court denied the petition for rehearing of a Petition for Certiorari in *Cities Service Gas Company* v. *Federal Power Commission, et al.*, at No. 556, October Term, 1946. This Honorable Court had denied the Cities Service Petition for Certiorari on November 12, 1946, and so the petition for rehearing was filed shortly after Petitioner herein filed its Petition for Certiorari on November 30, 1946. Since the denial of the writ herein, Counsel for Petitioner have learned that a letter from Counsel for the Cities Service Company addressed to the Clerk of this Court was submitted about the time of the filing of the petition for rehearing by the Cities Service Company, in which attention was called to the pendency of the Petition for Certiorari herein. The suggestion was made that the same ultimate question of jurisdiction of the Federal Power Commission as limited by the production and gathering exception of Section 1(b) of the Act, but under variant

states of fact, was presented by the two cases, and that the Court might wish to consider them at the same time.[1] Petitioner respectfully suggests that your Honorable Court may have been led to believe that the case at bar and the *Cities Service* case involved the same fundamental questions. This inadvertence could easily have resulted from this letter and from certain erroneous statements contained in the brief in opposition to the petition herein filed by the Federal Power Commission. The Commission brief adroitly seeks to catalogue the contested sales here involved within the class of sales made by pipe line companies *after* actual movement of the gas out of the state where produced. In order to avoid an examination by this Court of the legal limits of its jurisdiction, the Commission has fallen into the error of treating the field sales rate of Petitioner the same as a rate resulting from the inclusion of production and gathering facilities in an overall rate base. This is apparent from the statement in the Commission brief (p. 8) that the questions here raised "have been repeatedly considered by this Court and resolved adversely to the contention now advanced by Petitioner." Of the many cases cited on behalf of the Commission in support of that statement, those that are even remotely pertinent involved sales either off the trunk line system *outside of the state where produced*[2] *or at the state line,*[3] except *Peoples Natural Gas Company*

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[1] Copy of this letter as furnished to Petitioner by Counsel for Cities Service Gas Company is included herein as Appendix A.

[2] *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U. S. 581; *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 324 U. S. 635; *Cities Service Gas Co.* v. *Federal Power Commission*, 155 F. 2d 694; *Missouri* v. *Kansas Gas Co.*, 265 U. S. 298; *United Fuel Gas Co.* v. *Hallanan*, 257 U. S. 277.

[3] *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U. S. 591; *Public Utilities Commission* v. *Attleboro Steam & E. Co.*, 273 U. S. 83.

v. *Federal Power Commission* (127 F. 2d 153, cert. den. 316 U. S. 700). The *Peoples* case involved only whether sales were "in interstate commerce" when made *after* compression at the Peoples' (the producer) Pew Compressor Station and without any factual determination being made whether the gas came from nearby producing wells or had been transported to Pew Station from other fields in Pennsylvania. The opinion contains no reference whatsoever to Section 1(b) of the Natural Gas Act (*supra*). The case was one on appeal from granting enforcement of a *subpoena duces tecum* which was issued in a Commission proceeding to determine whether the Peoples Company was subject to investigation as to its status as a "natural-gas company". The decision also was aided by a pleading question under Rule 10(c) of the Rules of Civil Procedure (28 U. S. C. A. following Sec. 723c). The case has no relation whatsoever to the questions presented here. The Commission also cited the *Cities Service* case. The *Cities Service* case did not involve sales of gas made in the producing field such as are here presented; but involved issues of scope of review; the inclusion of producing and gathering facilities in the rate base; the inclusion of natural gas reserves in the rate base; and issues on depreciation and depletion; natural gasoline operations; income taxes; allocation of costs; and due process of law. Most of these questions even if not directly determined by this Court have been considered by it.[4] The question most nearly like the one here presented is on the inclusion of the cost of production and gathering facilities in the

[4] *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, 86 L. ed. 1037; *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U. S. 591, 88 L. ed. 333; *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U. S. 581, 89 L. ed. 1206; *Canadian River Gas Co.* v. *Federal Power Commission, id.*

rate base, an issue previously considered by this Court in *Canadian River Gas Company* v. *Federal Power Commission, et al.*, 324 U. S. 581. This is the issue discussed in the Commission brief on pages 11 and 12. *It is not the issue presented in the case at bar* despite the attempt of Respondent to make it so appear.

2. The fundamental issue *presented by Petitioner* in its request for *Certiorari* is one of jurisdiction of the Federal Power Commission under Sections 1(b) and 5(a) of the Natural Gas Act (15 U. S. C. Section 717(b), 717d (a)) *over the rates for the sale of natural gas in the field.* In the *Canadian River* case (*supra*) the opinion of Mr. Justice Douglas stated that in spite of Section 1(b) the cost of production and gathering properties could be included in determining the rate base of a "natural-gas company" under the Natural Gas Act. The opinion, however, goes on to state:

> "That does not mean that the part of Section 1(b) which provides that the Act shall not apply 'to the production or gathering of natural gas' is given no meaning. Certainly that provision precludes the Commission from any control over the activity of producing or gathering natural gas. For example, it makes plain that the Commission has no control over the drilling and spacing of wells and the like. *It may put other limitations on the Commission.* We only decide that it does not preclude the Commission from reflecting the production and gathering facilities of a natural gas company in the rate base and determining the expenses incident thereto for the purposes of determining the reasonableness of rates subject to its jurisdiction." (Emphasis supplied.) (324 U. S. 581 at 602-603.)

Thus the decision of the Court was only that the limiting provisions of the Natural Gas Act did not prevent the Commission from including the cost of production and gathering facilities in the rate base. In the case at bar the Commission has gone beyond the point of reflecting production and gathering facility costs in the rate base and has in fact *prescribed the only effective price* at which gas may be sold from such facilities. The effect of the order, if an usurpation of jurisdiction, is its own impact and the terms of the order are immediate (R. I 81-87). This, Petitioner earnestly submits, makes particularly appropriate the observation of Mr. Justice Jackson when he concurred in the *Canadian River* case:

> "It is true that the Act excludes 'production or gathering of natural gas' from jurisdiction of the Commission. If the Commission had imposed any direct regulation upon that activity, I would join in holding it to have exceeded its jurisdiction. But the orders in question have no immediate 'impact' upon production or gathering of gas." (324 U. S. at 609.)

3. The importance of this jurisdictional matter is apparent from the fact that the Natural Gas Act was enacted in order to occupy the field in which this Court had held that States might not act. (*Federal Power Commission* v. *Hope Natural Gas Company*, 320 U. S. 591, 609-610.) The field of production and gathering of natural gas is one of traditional state regulation and the importance of a clear decision on the bounds of state jurisdiction over the production of natural gas is evident from recent orders of the Corporation Commission of Oklahoma (entered December 9, 1946, subsequent to the filing of the Petition for Certiorari in this case), which set a minimum price of seven cents per M.c.f. for natural gas sold in the Guymon-Hugoton Field in

Oklahoma, to a pipe line company which transports the gas to markets in Kansas and Missouri.[5] Petitioner is advised that the Attorney General of the State of Oklahoma will file with your Honorable Court a brief on behalf of said State as *Amicus Curiae* pointing out the importance of a determination of state and federal jurisdiction over the sales price of natural gas in the field and so will not labor the point further here.

4. While there may be no conflict of decisions between Circuit Courts on this question, there is a new assumption of power by a federal agency and, therefore, a conflict between the States and the Federal Government under the Natural Gas Act which Petitioner earnestly submits must be resolved at this time.

IV.

The Controling Questions.

1. Does the Federal Power Commission under Section 1(b) of the Natural Gas Act have jurisdiction to regulate the sales price of natural gas which is produced or purchased by Petitioner within the same producing field in the State of Louisiana, is gathered from wells, and, before actual transportation outside of the field is begun, is delivered from the gathering system and sold in Louisiana to pipe line companies at their compressor stations in the producing field, is there commingled with gas obtained by

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[5] *Peerless Oil & Gas Co.* v. *Cities Service Gas Co., and all Operators, Producers and Takers of Natural Gas in the State of Oklahoma and particularly in the Guymon-Hugoton Field, etc.*, Corporation Commission of Oklahoma, Cause CD No. 1054, Order No. 19514; *Peerless Oil & Gas Co.* v. *Cities Service Gas Co.*, Corporation Commission of Oklahoma, Cause CD No. 1054, Order No. 19515 (December 9, 1946).

the pipe line companies from other sources, at which points title passes and all control by Petitioner ends and after which the gas is compressed by the purchasers for the purpose of transporting said gas through the purchasers' lines to points of delivery outside the State of Louisiana?

2. Is not the Federal Power Commission denied jurisdiction over the sales set forth in Question 1 because such sales are not "sales in interstate commerce" within the provision and meaning of Sections 1 and 2(7) of the Natural Gas Act (15 U. S. C. Sec. 717, 717a(7))?

V.

This Court's Attitude in Previous Cases.

This Court has previously considered the question of Federal jurisdiction in natural gas cases where the question involved a conflict between Federal and State jurisdiction.[6] In some cases a regulatory hiatus became apparent and in order to close the regulatory gap Congress acted. "In accomplishing that purpose the bill was designed to take 'no authority from State Commissions' and was 'so drawn as to complement and in no manner usurp state regulatory authority.' And the Federal Power Commission was given no authority over the 'production or gathering of natural gas'" (*Federal Power Commission* v. *Hope Natural Gas Company*, 320 U. S. 591 at 610).

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[6] *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U. S. 498, 86 L. ed. 371; *Missouri ex rel. Barret* v. *Kansas Natural Gas Co.*, 265 U. S. 298, 68 L. ed. 1027; See also *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83, 71 L. ed. 549.

VI.

Public Importance.

This Court has been careful to circumscribe the States within the limits of their own proper jurisdiction. It is now in the public importance that the Federal Power Commission be circumscribed within the limits of the jurisdiction conferred upon it by the Congress. Since the opinion of the Circuit Court of Appeals in the case at bar, there has been confusion as to the jurisdiction of the States over field sales of natural gas. This confusion and this apparent conflict are more inimical to the orderly progress of a republic with complementary authorities, than are conflicts of decisions between circuits on legal matters of a purely private nature. Notwithstanding this Court's frequent admonition that a denial of Certiorari is not to be taken as an affirmance of the legal principles stated in the lower Court's opinion, we have here no other indication of what is the opinion of your Honorable Court on a subject of jurisdiction not yet passed upon by the Supreme Court of the United States.

For the foregoing reasons Petitioner respectfully urges that a rehearing be granted; that upon sound consideration the order of January 6, 1947, denying the Petition of Certiorari be revoked; and that a Writ of Certiorari issue.

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Alden T. Shotwell,
Henry P. Dart, Jr.,
Henry Grady Price,
James Lawrence White,
Attorneys for Petitioner.

I, WILLIAM A. DOUGHERTY, of Counsel for the above named Petitioner, INTERSTATE NATURAL GAS COMPANY, INCORPORATED, do hereby certify that the foregoing petition is presented in good faith and not for purposes of delay.

WILLIAM A. DOUGHERTY.

WILLIAM A. DOUGHERTY.

Appendix A

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December 5, 1946

Re: Cities Service Gas Company v. *Federal Power Commission, et al.*, No. 556, October Term, 1946

Re: Interstate Natural Gas Company v. *Federal Power Commission*, No. 733, October Term, 1946

Hon. CHARLES ELMORE CROPLEY, Clerk
Supreme Court of the United States
Washington 13, D. C.

Attention: E. P. Cullinan, Assistant.

Dear Sir:

It seems proper that the attention of the Chief Justice and the members of the Court should be directed to the fact that the same ultimate question of the lawful authority of the Federal Power Commission to exercise regulatory jurisdiction under Section 1(b) of the Gas Act over the production and producers of natural gas is directly in issue, under variant states of fact, in both cases above entitled.

Each of the oil and gas industry organizations, which is filing *Amicus Curiae* briefs in the *Cities Service Gas Company* case, proposes to participate similarly in the *Inter-*

state Natural Gas Company case. Additionally, the States of Texas and Oklahoma, through their respective Attorneys General, are expected to participate in that case on the jurisdictional question involved.

It might well be that the Court would consider it wise to await the filing of such *Amicus Curiae* briefs in the *Interstate* case, during the month of December, before taking any further action in the *Cities Service* case, in order that the full reach of the issue may be resolved at one time.

Yours truly,

/sgd./ DONALD C. McCREERY
Attorney for Cities Service
Gas Company.

DCM/D

SUPREME COURT OF THE UNITED STATES

No. 733.—October Term, 1946.

Interstate Natural Gas Company, Incorporated, Petitioner, v. Federal Power Commission, et al.	On Writ of Certiorari from the United States Circuit Court of Appeals for the Fifth Circuit.

[June 16, 1947.]

Mr. Chief Justice Vinson delivered the opinion of the Court.

This case originated in proceedings before the Federal Power Commission initiated pursuant to § 5 (a) of the Natural Gas Act of 1938.[1] After overruling objections to its jurisdiction, the Commission entered an order requiring the petitioner to effect substantial rate reductions in certain of its sales of natural gas and to file new schedules of rates and charges.[2] Petitioner in seeking review of the order in the Circuit Court of Appeals, denied the jurisdiction of the Commission to set rates for the sales in issue in this case and asserted that the rates so established were confiscatory. That Court, one judge dissenting, denied the petition for review.[3] We granted certiorari limited to the question of the Commission's jurisdiction.

Petitioner owns and operates 110 natural gas wells and owns or controls over 56,000 acres in the Monroe field of northern Louisiana. Petitioner's main pipe line transports gas southward from the Monroe field through a part of Mississippi and back into Louisiana where at Baton Rouge sales are made to various distributing companies and industrial consumers. Petitioner concedes that with

[1] 52 Stat. 821, 15 U. S. C. § 717 *et seq.*; 56 Stat. 83.

[2] 3 F. P. C. 416.

[3] 156 F. 2d 949 (1946).

spect to these operations it is a natural gas company within the meaning of § 2 (6)[4] of the Act and that the Commission has jurisdiction to regulate the rates of sales connected therewith.

The issue of this case involves the jurisdiction of the Federal Power Commission to regulate sales made in the field by petitioner to three pipe-line companies each of which transports the gas so purchased to markets in States other than Louisiana.[5] Gas produced from petitioner's wells flows into petitioner's system of field pipe lines, moving first into branch lines, then into trunk lines, and finally into the main trunk lines from which delivery is made to the three purchasing companies. During the course of this movement petitioner purchases gas from other producers in the field which gas is introduced into petitioner's system at designated points and is there commingled with the gas moving from petitioner's own wells. By far the larger part of the gas so purchased by petitioner has been gathered from various wells of the selling companies before delivery to petitioner is made.[6] The gas moves through petitioner's system at well pressure. Shortly after the sales in question are completed, the gas is directed through the compressor stations of the purchasing companies and

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[4] Section 2 (6) provides: "'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."

[5] The three companies include the Mississippi River Fuel Corporation, Southern Natural Gas Company, and the United Gas Pipe Line Company to which gas is sold for the account of the Memphis Natural Gas Company.

[6] Petitioner produced and purchased a total of 51,659,799 Mcf of gas in the Monroe field during 1941. Of this total, petitioner produced from its own wells 28,819,814 Mcf. Of the 22,839,985 Mcf purchased, 95% was gathered by the producers before delivery to petitioner; the remaining 5% was purchased by petitioner directly at the well heads. Petitioner sold 21,863,278 Mcf to the three purchasing companies in the transactions in question.

is there subjected to increased pressure in order that it may be moved to markets as far distant as Illinois. The entire movement of the gas from the wells to the purchasing companies through the compressor pumps and across the state lines is a continuous process without interruption for storage, processing or for any other purpose.[7] All the gas sold in these transactions is destined for ultimate public consumption in States other than Louisiana.

It appears that petitioner supplies only a part of the gas purchased by the three pipe-line companies in the Monroe field.[8] Counsel for petitioner conceded before the Commission, that the prices charged the three pipe-line companies were, by agreement, identical with those being charged by other producers in the field. The Commission found that petitioner was an affiliate of one of the three purchasing companies. It was the conclusion of the Commission that the rates charged by petitioner in these sales were "unjust, unreasonable and unlawful" and ordered rate reductions amounting to $596,320 per year as applied to the volume of gas sold in the test year of 1941.

Petitioner has at no time contended that regulation of its sales to the three purchasing companies is beyond the constitutional powers of Congress. Petitioner has vigorously asserted, however, that Congress did not exercise its full powers in the Natural Gas Act and that in § 1 (b) of the Act the jurisdiction of the Federal Power Commission is so limited as to preclude valid regulation of the sales by that agency. Section 1 (b) provides:

[7] Gas in the Monroe field is "dry" gas and consequently is not subjected to any extraction processing. Before moving into the compressor pumps the gas is run through a series of "scrubbers" which remove dirt and foreign particles. This is accomplished, however, without interruption in the movement.

[8] The transactions in question supply the Mississippi Fuel Corp. with 22% of its requirements, 24% of the requirements of the Memphis Natural Gas Co., and 16.61% of the requirements of Southern Natural Gas Co.

"The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

It is not denied that the transactions in question were sales of natural gas for resale for ultimate public consumption.

Petitioner has raised two issues: First, it is contended, the sales are not "in interstate commerce." Second, the sales are a part of "production or gathering" and hence not within the Commission's power of regulation.

We have no doubt that the sales are in interstate commerce. Indeed, petitioner did not contest that position before the Commission, but, so far as the record reveals, raised the issue for the first time in its petition for rehearing in the Circuit Court of Appeals.[9] The Federal Power Commission found that the gas sold to the three pipe line companies moves ". . . in a constant flow from the mouths of the wells from which it is produced through pipe lines belonging to Interstate to the compressor station of the respective purchaser, and thence through said compressor

[9] In its complaint filed in the District Court for the Eastern District of Louisiana invoking the equity powers of the Court to restrain the Louisiana Public Service Commission from conducting an investigation into petitioner's rates and charges, petitioner specifically asserted that the sales in question are in interstate commerce and thus beyond the jurisdiction of the state commission. The District Court granted the requested relief. *Interstate Natural Gas Co.* v. *Public Service Commission*, 33 F. Supp. 50; 34 F. Supp. 980 (1940).

stations into the pipe line of said respective purchaser and thus into and through states other than Louisiana . . . , all without interruption, and said gas is so destined from the moment of its production." The Commission further found that "The gas transported and sold by Interstate to these three pipe line Companies continues its flow in interstate commerce and, as an established course of business well known to Interstate, is destined for resale for ultimate public consumption in . . . markets outside Louisiana."

Under the circumstances described by the Commission, it is clear that the sales in question were quite as much in interstate commerce as they would have been had the pipes of the petitioner crossed the state line before reaching the points of sale.[10] Thus in *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83 (1927), a sale of electrical energy at the state line was held to be in interstate commerce. Commenting on that case, this Court in *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61, 69 (1943) stated: "We see no distinction between a sale at or before reaching the state line." There is nothing in the terms of the Act or in its legislative history to indicate that Congress intended that a more restricted meaning be attributed to the phrase "in interstate commerce" than that which theretofore had been given to it in the opinions of

[10] *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189 (1925); *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50 (1922); *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282 (1921). And see *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U. S. 498, 503–504 (1942); *Currin* v. *Wallace*, 306 U. S. 1, 10 (1939); *Peoples Natural Gas Co.* v. *Public Service Comm'n.*, 270 U. S. 550, 554 (1926); *Illinois Central R. Co.* v. *Railroad Comm'n.*, 236 U. S. 157, 163 (1915). Cf. *Milk Control Board* v. *Eisenberg Farm Products*, 306 U. S. 346 (1939).

this Court.[11] Section 2 (7) of the Act defines "interstate commerce" as ". . . commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, ..." Clearly the sales in question were a part of commerce being carried on between points in Louisiana and points in other States. There is nothing in that language to suggest that Congress intended that sales consummated before the gas crosses a state line should not be regarded as being "in" such commerce.

Nor are we impressed with the suggestion that the interstate movement of the gas should be regarded as beginning when the gas, theretofore moving through petitioner's pipe line system at well pressure, is subjected to increased pressure in the compressor stations of the purchasing companies in order that the gas may be moved to the distant markets. Long before the gas reaches the compressor pumps it has been committed to its interstate journey which follows without interruption or deviation. Under such circumstances, the increase of pressure in the compressor stations must be regarded as merely an incident in the interstate commerce rather than as its origin."[12]

The Company contends, however, that regardless of whether the sales in question are in interstate commerce, those transactions fall within the clause of § 1 (b) specifically excepting from the Commission's jurisdiction regulation of ". . . the production or gathering of natural gas." In evaluating that contention we should not lose sight of

[11] *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U. S. 498, 508 (1942); *Peoples Natural Gas Co.* v. *Federal Power Comm'n.*, 75 U. S. App. D. C. 235, 127 F. 2d 153 (1942). Cf. *Jersey Central Power & Light Co.* v. *Federal Power Comm'n.*, 319 U. S. 61, 70–71 (1943).

[12] Cf. *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, *supra* at 504–505; *State Tax Comm'n.* v. *Interstate Natural Gas Co.*, 284 U. S. 41, 44 (1931).

the objectives sought to be accomplished by Congress in passing the Natural Gas Act.

In a series of decisions announced prior to the passage of the Act, this Court had held that although Congress had not acted, the regulation of wholesale rates of gas and electrical energy moving in interstate commerce is beyond the constitutional powers of the States.[13] Petitioner, relying in part upon the principles established by those cases, has successfully avoided regulation by the Louisiana Public Service Commission.[14] As was stated in the House Committee report, the "basic purpose" of Congress in passing the Natural Gas Act was "to occupy this field in which the Supreme Court has held that the States may not act."[15] In denying the Federal Power Commission jurisdiction to regulate the production or gathering of natural gas, it was not the purpose of Congress to free companies such as petitioner from effective public control. The purpose of that restriction was, rather, to preserve in the States powers of regulation in areas in which the States are constitutionally competent to act. Thus the House Committee Report states: "The bill takes no authority from State Commissions, and is so drawn as to complement and in no manner usurp State regulatory authority. . . ."[16] Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern.[17]

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[13] *Missouri* v. *Kansas Natural Gas Co.*, 265 U. S. 298 (1924); *Public Utilities Comm'n.* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83 (1927); *State Corp. Comm'n.* v. *Wichita Gas Co.*, 290 U. S. 561 (1934).

[14] See note 9, *supra*.

[15] H. R. Rep. No. 709, 75th Cong., 1st Sess., 2.

[16] *Ibid.*

[17] *Colorado Interstate Gas Co.* v. *Federal Power Comm'n.*, 324 U. S. 581, 602–603 (1945).

It was the intention of Congress to give the States full freedom in these matters. Thus, where sales, though technically consummated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory functions, the jurisdiction of the Federal Power Commission does not attach.[18] But such conflict must be clearly shown. Exceptions to the primary grant of jurisdiction in the section are to be strictly construed. It is not sufficient to defeat the Commission's jurisdiction over sales for resale in interstate commerce to assert that in the exercise of the power of rate regulation in such cases, local interests may in some degree be affected.[19]

There is nothing in the record to indicate that the regulation in question is in any way inconsistent with the exercise by Louisiana of the powers over production and gathering of natural gas reserved to it by Congress in § 1 (b) of the Act. The State in a series of enactments has made elaborate provision for the conservation of its natural gas resources and has established various rules and regulations relating to the production and gathering process.[20] Most of those provisions presumably, are ap-

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[18] The Federal Power Commission has not asserted jurisdiction over all sales taking place in the natural gas fields even though in interstate commerce for resale for ultimate public consumption. *In the Matter of Columbia Fuel Corp.*, 2 F. P. C. 200; *In the Matter of Billings Co.*, 2 F. P. C. 228. We express no opinion as to the validity of the jurisdictional tests employed by the Commission in these cases.

[19] Cf. *Colorado Interstate Gas Co.* v. *Federal Power Comm'n.*, *supra* at 603; *Federal Power Comm'n.* v. *Hope Natural Gas Co.*, 320 U. S. 591, 607–612 (1944).

[20] La. Gen. Stat. §§ 4766–4826.2.

plicable to petitioner's field operations.[21] The record is devoid of any suggestion that Louisiana has ever opposed the jurisdiction of the Federal Power Commission in this case or has ever urged that federal regulation of the sales in question would interfere with the exercise by the State of its regulatory functions.[22] We do not suggest that the jurisdiction of the Commission in any case is to be determined by the resistance or lack of resistance on the part of the State to federal regulation. But in evaluating the Company's contention that the State's powers have been invaded, we regard it a matter of some significance that although the State has freely exercised its regulatory powers over the production and gathering of natural gas, there is no evidence of any conflict, present or threatened, in the performing of those functions by the State with the exercise of the jurisdiction of the Federal Power Commission in this case.

It is not contended that the Commission is precluded from regulating the sales in question by reason of the exception from the Commission's jurisdiction relating to the production of natural gas. Petitioner asserts, however, that the sales to the three pipe line companies are a part of the gathering process and consequently not within the Commission's power of regulation. This basic contention has given rise to a great many subsidiary questions such as whether the sales were made from petitioner's "gathering" lines or from petitioner's "transmission" lines and whether the gathering process continued to the points of sale or was, as the Commission found, completed at some point prior to surrender of custody and passage of title. We have found it unnecessary to resolve those issues.

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[21] The record contains testimony by counsel for petitioner to the effect that these provisions apply to petitioner and that petitioner's operations have conformed with their requirements.

[22] Counsel for the Louisiana Public Service Commission and for two Louisiana municipalities participated in the proceedings before the Federal Power Commission.

The gas moved by petitioner to the points of sale consisted of gas produced from petitioner's wells commingled with that produced and gathered by other companies and introduced into petitioner's pipe line system during the course of the movement. By the time the sales are consummated, nothing further in the gathering process remains to be done. We have held that these sales are in interstate commerce. It cannot be doubted that their regulation is predominately a matter of national, as contrasted to local concern. All the gas sold in these transactions is destined for consumption in States other than Louisiana. Unreasonable charges exacted at this stage of the interstate movement become perpetuated in large part in fixed items of costs which must be covered by rates charged subsequent purchasers of the gas including the ultimate consumer.[23] It was to avoid such situations that the Natural Gas Act was passed.

For reasons stated above we have concluded that the Federal Power Commission in this case has not exceeded the jurisdiction conferred upon it by Congress in § 1 (b) of the Natural Gas Act.

Affirmed.

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[23] A number of cases in this Court have held that the reasonableness of cost items such as that incurred by a purchasing pipe-line company in acquiring gas for transportation may be inquired into during the course of subsequent regulation when buyer and seller are affiliated corporations and there is evidence that the sales were not made at arms length. The Commission found affiliation to exist between petitioner and only one of the three purchasing companies, the Mississippi River Fuel Corporation. There was a finding of "close contractual and operating arrangements" between petitioner and another of the purchasing companies. *Natural Gas Pipeline Co.* v. *Slattery*, 302 U. S. 300 (1937); *Columbus Gas & Fuel Co.* v. *Public Utilities Comm'n.*, 292 U. S. 398 (1934); *Dayton Power & Light Co.* v. *Public Utilities Comm'n.*, 292 U. S. 290 (1934); *Western Distributing Co.* v. *Public Service Comm'n.*, 285 U. S. 119 (1932); *Smith* v. *Illinois Bell Telephone Co.*, 282 U. S. 133 (1930); *United Fuel Gas Co.* v. *Railroad Comm'n.*, 278 U. S. 300 (1929).